IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 739 of 1997
in
SPECIAL CIVIL APPLICATION No 4110 of 1995
with
CIVIL APPLICATION No.6624 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

SATISHCHANDRA V SHAH

Appearance:

1. LETTERS PATENT APPEAL No. 739 of 1997

MR HD DAVE AGP for Appellant No.

MR HJ NANAVATI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 30/11/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

Respondent-original petitioner, Shri Satishchandra V. Shah was working as Junior Clerk against reserved vacancy of Ex-Serviceman in Narmada Project Colony and Programme Circle. In 1981, he appeared in the departmental examination, but could pass only two papers and could not clear the third paper. Next year i.e. in 1982 he was informed about the examination at the nick of movement, but could not appear as he was on leave. Thereafter, by a letter dated 27.7.1994 Narmada Yojana Colony and Procurement, Vadodara asked the petitioner to apply for grace. Accordingly, he moved an application dated 11.10.1994. However, apprehending his termination on the ground of not clearing the departmental examination, he approached this court by way of Special Civil Application No.4110/95 on 12.5.1995. On 15.5.1995 notice was ordered to be issued on it, but no counter was filed. Unfortunately, on 12.5.1995 the day on which he filed petition on the very day his services were terminated only on the ground of his failure to clear departmental examination in three attempts. Therefore, the petitioner was permitted to amend his petition and by amending his petition he challenged his termination order dated 12.5.1995 in the petition.

It is an admitted fact that the petitioner was in service as Junior Clerk right from 1979 against the reserved vacancy for Ex-Serviceman and that he had served for about 15 years and on the ground of his failure to pass the departmental examination in three chances his services were terminated.

It is not in dispute that others were allowed to clear the departmental examination on 4th attempt and some were shown special favour either under the orders of the court or by the Government on its own for the 5th time. In the instant case, he was called upon to apply for grace chance and in fact he had applied for it. Under the circumstances, in our considered opinion, the learned Single Judge was right in allowing the writ petition and setting aside the termination order of the petitioner and reinstating him in service by granting all consequential benefits. This order dated 18.11.1995 passed by the learned Single Judge of this court in Special Civil Application No.4110/95 is challenged in

this appeal by the appellant-State of Gujarat and others. This appeal was admitted long back, but it is to be stated that on Civil Application No.6624/97 for stay except making rule returnable on 10.12.1997, Division Bench of this court has not granted interim relief in favour of the appellants-applicants. Thus, in absence of any interim order passed in favour of the present appellants on the stay application they were supposed to comply with the order passed by the learned Single Judge.

However, learned AGP, Mr.Dave vehemently submitted that the decision of the State Government of terminating services of the petitioner was strictly in accordance with rules as admittedly the original-petitioner failed to clear the departmental examination in three attempts. He, therefore, submitted that the learned Single Judge was wrong in allowing the writ petition of the original petitioner. It is true that under the rules one has to clear the departmental examination in three attempts, but even learned AGP, Mr.Dave also conceded that in a given case on sufficient grounds, others have been permitted to appear in 4th or even in 5th attempt. In that view of the matter, when the learned Single Judge of this court has thought it fit to exercise his discretionary jurisdiction under Art.226 of the Constitution of India in favour of the petitioner keeping in view the fact that the petitioner served on reserved quota of Ex-Serviceman and that he served the department for a period of 15 years, then certainly this court would not like to interfere with such discretionary orders in this Letters Patent Appeal. More particularly, when the judgment and order passed by the learned Single Judge allowing the petition was passed almost 9 years from today and though this appeal was admitted by the Division Bench of this court long back, the Division Bench has not thought if fit to stay the implementation and execution of the order passed by the learned Single Judge.

In view of the above discussion, this appeal fails and is hereby dismissed. No order as to costs.

Civil Application is dismissed as main appeal is dismissed. Rule is discharged.

(B.J.Shethna, J.)

(Sharad D. Dave, J.)

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